

The regulation governing jurisdictional questions under the Home Rule Municipal Retailers' Occupation Tax does not apply to titled and registered tangible personal property. 86 Ill. Adm. Code 270.115. (This is a GIL).

July 16, 2002

Dear Xxxxx:

This letter is in response to your letter received April 2, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

I am writing you on behalf of my client (the 'Company') who is requesting a General Information Letter ('GIL') pursuant to 2 Ill Adm. Code 1200.120. The GIL should address application of the jurisdictional rules for the Retailers' Occupation Tax ('ROT') to the sale of motor vehicles. GILs respond to inquiries made by taxpayers or their representatives. We understand that GILs discuss tax principles or applications and are not binding on the Illinois Department of Revenue ('IDOR').

MATERIAL FACTS

The company is an automobile is an automobile dealer with an 'established place of business', as that phrase is defined in 625 ILCS 5/5-100, in a large Illinois city ('City1'). The Company's 'established place of business' is, in essence, the automobile dealership, and the Company displays and delivers automobiles from its 'established place of business.' The Company also employs salespeople at its established place of business.

The Company recently entered a lease and established a corporate office in a second city ('City2'). This corporate office was established so that Company's management could exert greater control over the sales approval process. The Company also believes that the establishment of a corporate office in a smaller city will help the Company control costs, such as rent and salaries, which are naturally higher in a larger metropolitan area.

The Company employs an deal analyst at the corporate office, City2, who has the authority to give complete and unconditional approval on all sales of automobiles. The sales process, as documented in written Company procedures, is as follows:

1. A salesperson meets with a potential buyer at the automobile dealership in City1.

2. Once the potential buyer has selected an automobile, the salesperson and the customer begin preliminary negotiations on the price and various other terms of the purchase.
3. The salesperson also takes a credit application from the potential buyer, and the credit manager, who is also located at the automobile dealership in City1, runs a credit check on the potential buyer. If the credit check is satisfactory, the credit manager gives preliminary approval to the salesperson to proceed in negotiations with the potential buyer.
4. Once the proposed terms of the sale are established to the satisfaction of both the buyer and salesperson, the salesperson submits the deal for preliminary approval to the general manager who is also located at the automobile dealership in City1. If the general manager believes that the preliminary agreement negotiated between the potential buyer and the salesperson is acceptable, the general manager faxes a copy of the proposed contract along with a summary of the credit manager's findings with respect to the potential buyer's credit worthiness to the corporate office in City2.
5. Upon receipt of the above information from the automobile dealership in City1, the deal analyst in City2 evaluates the proposed terms of the sales contract against the criteria established by management. The established criteria address the minimum amount of profit that is acceptable on various categories of automobiles and the required amount of down payment or trade-in required taking into consideration the potential buyers credit information.
6. If the proposed sales contract meets the criteria established by management, then the deal analyst faxes back an approval to the general manager. If the proposed contract does not meet the criteria then the deal analyst faxes back a rejection notice explaining which of the established criteria the proposed sale failed to meet.
7. Once the deal analyst approves of a proposed sale, the potential buyer's offer is considered to be completely and unconditionally accepted, and the general manager makes arrangements to have the paper work completed and the automobile delivered to the buyer.

The company's standard procedures are described above. However, the procedures are slightly different on the days that the credit manager in City1 is off work. If the credit manager is off work, the deal analyst in City2 performs the credit check. Otherwise, the procedures are as described above.

ISSUE 1

Whether the jurisdictional rules for the Home Rule Retailers' Occupation Tax stated in 86 Ill. Admin. Code §270.115 apply in determining the proper municipal situs for sales of motor vehicles required to be licensed with the Secretary of State even though the sale of such items are specifically exempted from the Home Rule Retailers' Occupation Tax.

ISSUE 2

Whether the deal analyst's complete and unconditional approval of the sale after comparison of the terms of the proposed sale and the buyer's credit information against established Company guidelines conclusively establishes City2 as the situs of the sale for purposes of the Illinois Retailer's Occupation tax despite certain other elements of the sale taking place in City1.

ISSUE 3

Whether the deal analyst's complete and unconditional approval of the sale after running a credit check and comparing the terms of the proposed sale and the buyer's credit information against established Company guidelines conclusively establishes City2 as the situs of the sale for purposes of the Illinois Retailer's Occupation tax despite certain other elements of the sale taking place in City1.

RELEVANT AUTHORITIES AND ANALYSIS

Generally Relevant Authorities

Retailers of motor vehicles are required to file, upon a form prescribed and supplied by the Illinois Department of Revenue, a separate return for each motor vehicle that the retailer sells. Such transaction reporting must show, among other information, the place and date of the sale. 35 ILCS 120/3 and 86 Ill. Admin. Code §130.540(b).

Illinois municipalities receive 16 percent of the total general merchandise sales tax collections on sales within their incorporated boundaries. 35 ILCS 120/3.

Sales of tangible personal property required to be titled with the Illinois Secretary of State are specifically exempted from the Home Rule Retailers' Occupation Tax. 65 ILCS 5/8-11-1 and 86 Ill. Admin. Code 270.101

Analysis

Issue 1

The department has applied its 'complete and unconditional' test for determining the proper municipal situs for motor vehicle sales in a previous ruling. In PLR 87-0340, the Department applied the 'complete and unconditional' test to a scenario presented by an automobile dealer that was conducting a tent sale at a location other than the automobile dealer's normal place of business. The Department indicated that if a credit check is the final step in approving a sale 'completely and unconditionally' then the sale is situated for Municipal Retailers' Occupation Tax purposes where this credit check is performed.

While PLR 87-0340 was issued prior to the exclusion of motor vehicles from application of the Municipal Sales Tax, neither the legislature or the Department has not developed alternative rules for the proper municipal situsing of sales of motor vehicles. This is in contrast to the specific alternative rules for situsing the sale of coal and other minerals, which are situated in the location where they are removed from the earth.

Issues 2 and 3

The Department's regulations provide that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling' 86 Ill. Admin. Code 270.115(b)(1). Furthermore, the regulation states that if a purchase order which is an acceptance of the seller's *complete and unconditional* offer to sell is received by the seller's place of

business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule Municipality Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. *Id.*

Therefore, under the Department's regulation, where a sale is situated for municipal retailer's occupation tax hinges on where the offer to sell becomes complete and unconditional. The Department has issued a number of Private Letter Rulings ('PLR') illustrating where a sale is situated in PLR 87-0340 (May 14, 1987), the Department stated that the determination of where a sale is made is a question of 'fact as to where the purchase order is subject to acceptance. The business procedures or procedures surrounding the making of a binding agreement to sell on the part of a given dealership is going to control the question of which municipality is entitled to the tax.' *Id.*

The facts in PLR 87-0340 deal with an auto dealership headquartered and licensed in 'City A' that conducted two large used car sales in 'City B.' (Although not labeled in the PLR, for reasons of clarity we are referring to the two locations as 'City A' and 'City B'). Although more details about how the transactions took place were not provided, the Department did state, '[i]f a car dealer receives a purchase order in [City B], but then transmits the purchase order to the dealership location in another municipality where they may run a credit check on the potential buyer for financing purposes or other purposes, this would indicate that the purchase order is not subject to final acceptance at [City B], but rather is subject to final acceptance at the dealership location.' *Id.* The Department indicates that if a credit check is the final step in approving a sale 'completely and unconditionally,' then the sale is situated for Municipal Retailers' Occupation Tax purposes where this credit check is performed.

Finally in PLR 91-0162 (March 5, 1991), dealing with a multi-step approval process, the Department followed its 'complete and unconditional' test by confirming that the situs for sales tax purposes is where the final acceptance step occurred. In that case, an oil marketing and distribution company stated it used the following approval process: First, an order is taken by a customer service clerk who processes the order and determines if the customer has a commercial account. If the customer has a commercial account, the order is sent to the credit manager for credit approval at an unnamed location. If credit is approved, the order then goes to the Executive Vice President (based in the same location) for price determination and pricing authority. The order is then forwarded to the billing/pricing clerk for processing (who is also at the same location).

Once processed, the order is relayed to the commercial sales office in CITY3, Illinois where it goes through a final acceptance process. The commercial sales manager compares each order to a master customer record to verify the accuracy of the customer's name, address, account number, product and quantity ordered, and special care instructions pertaining to delivery. If the order is deemed accurate, the order is accepted. Only after the commercial sales manager accepts an order will the order be faxed to the dispatch center (at a separate location) for release. If an order is somehow inaccurate, the defect must be cured before the product will be released.

The company stated that in addition to sales tax savings for its customers, the CITY3 office is utilized primarily for administrative and personnel cost efficiencies. The company stated that based on its procedure for processing commercial sales, it

believes that the ROT should be situated in CITY3, Illinois. Based on the facts the company provided, the Department agreed with the company's conclusion.

The Department's analysis in PLR 87-0340, PLR 87-0262 and PLR 91-0162 illustrate how the Company's transaction process should be treated. The Company receives purchase orders at one location, where the orders are input into the company's computer system, and transmits the pending orders to another location for credit verification. Since the final test is performed in CITY2, the sale will not become 'complete and unconditional' until the approval process is completed there. As a result, the Company's sales should be situated in CITY2 for municipal retailer's occupation tax purposes.

The Company knows of no authority contrary to the above-cited authorities.

CONCLUSION

Issue 1

Since there are no specific rules regarding the proper siting of sales of motor vehicles, the Department's rules for determining the siting of sales of general merchandise for purposes of the Home Rule Municipal Tax should apply to the sales of motor vehicles.

Issue 2

The fact that the deal analyst completely and unconditionally approves of the sale after comparison of the terms of the proposed sale and the buyer's credit information against established Company guidelines conclusively establishes City2 as the situs of the sale for purposes of the Illinois Retailer's Occupation tax despite certain other elements of the sale taking place in City1.

Issue 3

The fact that the deal analyst runs a credit check and then completely and unconditionally approves the sale after comparison of the terms of the proposed sale and the buyer's credit information against established Company guidelines conclusively establishes City2 as the situs of the sale for purposes of the Illinois Retailer's Occupation tax despite certain other elements of the sale taking place in City1.

Thank you for your time and consideration of this matter. Should you need additional information of clarification please call me.

The regulation governing jurisdictional questions under the Home Rule Municipal Retailers' Occupation Tax does not apply to titled and registered tangible personal property. See, 86 Ill. Adm. Code 270.115. Rather, under the Municipal Code and the Counties Code, items of tangible personal property which are titled or registered are subject to various local use taxes. These taxes are generally situated to the jurisdiction in which the property is titled or registered. Generally, local units of government that impose such taxes also administer the taxes themselves. It should be noted, however, that the Department administers the Chicago Home Rule Use Tax on titled property. Retailers in Chicago, as well as all contiguous counties, collect this tax on behalf of Chicago and

remit it to the Department.

In addition, unlike the local taxes discussed above, there are a number of local occupation taxes that apply to retailers making sales of titled or registered tangible personal property. Such taxes include the Regional Transportation Authority Retailers' Occupation Tax, the County Water Commission Retailers' Occupation Tax and the Metro-East Mass Transit District Retailers' Occupation Tax. These taxes are occupation taxes imposed upon retailers within these jurisdictions that make sales of titled or registered tangible personal property. Unlike most local use taxes, these taxes are administered by the Department, and are generally situated to the location of purchase order acceptance, in accordance with the principles outlined at 86 Ill. Adm. Code 270.115. These jurisdictions also impose a Use Tax upon titled or registered items purchased from retailers outside these districts that are titled or registered to addresses within these districts.

Your letter does not indicate the precise location of the retailers. This information is of critical importance in determining if such retailers would be subject to a local occupation tax, or instead, if the purchasers would be subject to a local use tax. As indicated above, this information will also be critical in determining the proper manner in which to situs the tax. If the retailer is subject to a local occupation tax, tax will be situated to the location at which the sale occurs. However, if the transaction is not subject to a local occupation tax but instead to a local use tax, the tax will generally be situated to the location at which the property is titled or registered. Without more specific information, the Department is unable to make specific determinations in this matter.

The State Finance Act provides that the local portion of the 6.25% State rate is deposited into the Local Government Tax Fund and is distributed to each local unit of government by the amount attributable to sales for which Illinois addresses for titling or registration purposes are given as being in such location.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.